

Title 2. California Public Employees' Retirement System

NOTICE OF PROPOSED REGULATORY ACTION

NOTICE IS HEREBY GIVEN that the Board of Administration (Board) of the California Public Employees' Retirement System (CalPERS) proposes to take the action described below in the Informative Digest after considering public comments, objections, or recommendations.

I. PROPOSED REGULATORY ACTION

In this filing, the Board proposes to amend section 599.500(t) and establish section 599.511 entitled "Alternative Benefit Plans" in Title 2 of the California Code of Regulations. This proposed regulatory action would define the term "alternative benefit plan" in section 599.500(t) and further provide the Board with authority to approve alternative benefit plans for contracting agencies should the Board choose to as set forth in proposed section 599.511.

II. WRITTEN COMMENT PERIOD

Any person interested may submit written comments relevant to the proposed regulatory action. The written comment period closes at 5:00 pm on May 17, 2004. The Regulations Coordinator must receive all written comments by the close of the comment period. Comments may be submitted via fax at (916) 326-3379; email at the following address: marilyn_clark@calpers.ca.gov; or mailed to the following address:

Marilyn Clark, Regulations Coordinator
California Public Employees' Retirement System
400 P Street, Room 1120
P.O. Box 942702
Sacramento, California 94229-2702

Telephone: (916) 326-3007

III. PUBLIC HEARING

Comments on the proposed actions will also be taken at a public hearing to be placed on the agenda of the regularly scheduled meeting of the CalPERS Health Benefits Committee:

May 18, 2004
10:00 a.m. (or immediately following the meeting of the Benefits and Program Administration Committee)
California Public Employees' Retirement System
400 P Street, Sacramento, California 95814

IV. ACCESS TO HEARING ROOM

The hearing room will be accessible to persons with mobility impairments, and it can be made accessible to persons with hearing or vision impairments upon advance request to the Regulations Coordinator.

V. AUTHORITY AND REFERENCE

Government Code section 22773 grants the Board "all powers reasonably necessary to carry out the powers and responsibilities expressly granted or imposed upon it" pursuant to the Public Employees' Medical and Health Care Act (PEMHCA). In addition, Government Code section 22775 empowers the CalPERS Board to adopt all necessary rules and regulations to carry out the provisions of PEMHCA "including but not limited to establishing the scope and content of a basic health benefits plan, regulations fixing reasonable minimum standards for health benefits plans, regulations fixing the time, manner, method and procedures for determining whether approval of any plan should be withdrawn, and regulations pertaining to any other matters it may be expressly authorized or required to provide for by rule or regulation by the provisions of this part." When adopting such rules and regulations, section 22775 directs the Board to "be guided by the needs and welfare of individual employees, particular classes of employees, and of the State, as well as prevailing practices in the field of prepaid medical and hospital care."

Government Code section 22790(e)(2) authorizes the Board to contract for, or approve, health benefit plans exclusively for the employees and annuitants of contracting agencies, including offering health benefit plans in addition to or in lieu of other health benefit plans offered. The governing body of a contracting agency may elect, upon the filing a resolution with the board, to provide those health benefit plans to its employees and annuitants.

The attached amendment to section 599.500 and proposed section 599.511 implement, interpret and make specific Government Code Section 22790(e)(2).

VI. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This proposed action would implement, interpret and make specific Government Code section 22790(e)(2). This proposed action would provide criteria for approving alternative benefit plans in the event the board elects to offer such plans, specifies that State employees and annuitants are not eligible to enroll in such plans, and establishes criteria for the effective dates of resolutions that are submitted by contracting agencies to elect such plans.

The proposed action would amend existing section 599.500 to define the term "alternative benefit plan." The proposed action would also adopt proposed section 599.511 authorizing the Board to approve alternative benefit plans for contracting agencies should it choose to do so.

VII. EFFECT ON SMALL BUSINESS

The proposed regulatory action does not affect small business because it applies only to state and public agency participation under the PEMHCA.

VIII. DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

- A. MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS: The proposed regulatory action does not impose a mandate on local agencies or school districts.
- B. COST OR SAVINGS TO ANY STATE AGENCY: The proposed regulatory action does not impact costs or savings for any state agency.
- C. COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT: The proposed regulatory action does not impact costs or savings for any local agency or school district, such that costs would qualify for reimbursement under Government Code section 17500 et seq.
- D. NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES: The proposed regulatory action does not impose non-discretionary costs or savings on local agencies.
- E. COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE: The proposed regulatory action does not impact any federal funding to the state.
- F. ADVERSE ECONOMIC IMPACT: CalPERS has made an initial determination that the proposed regulatory actions will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of business in California to compete with business in other states.
- G. COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES: CalPERS is not aware of any cost impacts that a representative private person, or business would necessarily incur in reasonable compliance with the proposed action.
- H. IMPACT ON JOBS AND BUSINESSES WITHIN CALIFORNIA: The proposed regulatory action will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- I. EFFECT ON HOUSING COSTS: The proposed regulatory action has no significant effect on housing costs.

IX. CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the above mentioned hearing or during the written comment period.

X. CONTACT PERSONS

Please direct inquiries concerning the substance of the proposed regulatory action to:

Heather Martin, Policy Unit
Office of Health Policy and Plan Administration
California Public Employees' Retirement System
P.O. Box 942714
Sacramento, California 94229-2714

Telephone: (916) 795-0333
Fax: (916) 658-1277
E-mail: heather_martin@calpers.ca.gov

Please direct requests concerning processing of this regulatory action to Marilyn Clark, Regulations Coordinator, at (916) 326-3007, or Barbara Galli, backup Regulations Coordinator, at (916) 558-4098.

XI. AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The entire rulemaking file is available for public inspection through the Regulations Coordinator at the address shown above. To date the file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons (ISR). A copy of the proposed text and the ISR is available at no charge upon telephone or written request to the Regulations Coordinator.

The Final Statement of Reasons can be obtained, once it has been prepared, by written request to Marilyn Clark, Regulations Coordinator, at the address shown in Section II.

For immediate access, the regulatory material regarding this action can be accessed at CalPERS' web site at www.calpers.ca.gov under Members, About CalPERS, Proposed Regulatory Actions.

XII. AVAILABILITY OF MODIFICATIONS TO PROPOSED AMENDMENT

The Board may, on its own motion or at the recommendation of any interested person, modify the proposed amendment to the regulation after the public comment period has closed. It may amend sections 599.500 or 599.511 as modified if the changes are sufficiently related to the original text so the public could have anticipated them.

If the Board modifies its regulatory action in this manner, it will prepare a comparison of the original proposed text and the modifications for an additional public comment period of not less than 15 days prior to the date on which the Board adopts, amends or repeals the resulting regulation. A copy of the comparison text will be mailed to all persons who submitted written comments or asked to be kept informed as to the outcome of this regulatory action.

PROPOSED REGULATORY ACTION BY CALPERS

AMEND SECTION 599.500 AND ADOPTION OF SECTION 599.511 TO TITLE 2 OF THE CALIFORNIA CODE OF REGULATIONS

Amend Section 599.500 ("Definitions") by adding a new subsection (t) as follows:

- (t) "Alternative benefit plan" means a health benefits plan approved, or contracted for, by the Board exclusively for employees or annuitants of contracting agencies pursuant to Section 22790(e)(2).

Add new Section 599.511 as follows:

Section 599.511 Alternative Benefit Plans

- (a) To be qualified to be approved, or contracted for, by the Board, an alternative benefit plan must comply with the Public Employees' Medical and Hospital Care Act and this subchapter.
- (b) Notwithstanding any other provision of this subchapter, only employees and annuitants of contracting agencies and their family members shall be eligible to enroll in an alternative benefit plan.
- (c) Notwithstanding any other provision of this subchapter, the Board may elect to offer one or more alternative benefit plans to contracting agency employers in lieu of any other health benefits plans approved or contracted for by the Board.
- (d) In the event that the governing board of a contracting agency that is subject to the Public Employees' Medical and Hospital Care Act elects to provide an alternative benefit plan(s) to its employees or annuitants, it must file a resolution with the Office of Employer and Member Health Services of the Board. The resolution shall be effective on the first day of the second month following the month in which the resolution is received in the office of the Board.

NOTE: Authority cited: Sections 22773, 22775, Government Code.
Reference: Sections 22790(e)(2), 22794(b)(3), Government Code.

INITIAL STATEMENT OF REASONS

Amendment of section 599.500 – Definitions and Adoption of section 599.511 – Alternative Benefit Plans

Description of Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Regulation is Intended to Address:

Pursuant to its authority under the Public Employees' Medical and Hospital Care Act (PEMHCA), Government Code section 22751, *et seq.*, the Board of Administration (Board) of the California Public Employees' Retirement System (CalPERS) administers health benefits for over one million enrollees who are employees and annuitants (and their family members) of the State and of those school and public agency employers that have elected to participate in PEMHCA.

Due to on-going increases in health benefit premiums, CalPERS continually examines health plan and fiscal policy issues to ensure the most effective, efficient, and competitive health benefit plan administration. To remain competitive with commercial plans, the Board sponsored Senate Bill 436 (Soto), which amended Government Code section 22790(e)(2), effective January 1, 2004, to authorize CalPERS to provide alternative benefit plans exclusively to employees and annuitants of contracting agencies. Government Code Section 22790(e)(2) states that, notwithstanding any other provision of PEMHCA, the Board may:

Contract for, or approve, health benefits plan exclusively for the employees and annuitants of contracting agencies. State employees and annuitants may not enroll in these plans. The board may offer health benefits plans for employees and annuitants of contracting agencies in addition to or in lieu of other health benefits plans offered under this part. The governing body of a contracting agency may elect, upon filing a resolution with the board, to provide those health benefits to its employees and annuitants. The resolution shall be subject to mutual agreement between the contracting agency and the recognized employee organization, if any.

Background:

In furtherance of its fiduciary duty to nearly 1.2 million health benefit plan members, the Board approved the attached amendment to existing section 599.500 and proposed section 599.511 on an emergency basis in order to allow the flexibility to implement alternative benefit plans, should it elect to do so, as authorized by Government Code section 22790(e)(2). This amendment is necessary at this time because the Board has determined that the ability to offer alternative benefit plans to contracting agencies is crucial in order to remain competitive with commercial plans in lower cost areas. Providing alternative benefit plans will minimize the number of contracting agencies opting out of PEMHCA and provide overall risk pool and health care premium rate stability. The proposed amendment to section 599.500 defines an alternative benefit plan consistent with recently amended Government Code section 22790 and proposed

section 599.511 provides the Board with flexibility to approve alternative benefit plans at its June 2004 meeting for health care coverage during the 2005 calendar year for employees and annuitants of contracting agencies. Proposed section 599.511 further provides, among other things, criteria for approving alternative benefit plans in the event the board elects to approve such plans, specifies that State employees and annuitants are not eligible to enroll in such plans, and establishes criteria for the effective dates of resolutions that are submitted by contracting agencies to elect such plans.

The amendment to section 599.500 and proposed section 599.511 implement, interpret, and make specific the provisions of Government Code section 22790(e)(2).

Specific Purpose: The purpose of amended section 599.500 is to define the term “alternative benefit plan.” The purpose of proposed section 599.511 is to (1) provide criteria for approving alternative benefit plans in the event the Board elects to offer such plans, (2) preclude state employees and annuitants from enrolling in any alternative benefit plans offered, and (3) establish criteria for the effective dates of resolutions that are submitted by contracting agencies to elect such plans.

Necessity: This action is necessary to (1) define alternative benefit plans, (2) provide criteria for approving alternative benefit plans in the the event the Board elects to do so, (3) preclude state employees and annuitants from enrolling in any alternative benefit plans offered, and (4) establish criteria for the effective dates of resolutions that are submitted by contracting agencies to elect such plans. In order to retain existing contracting agencies as well as attract new contracting agencies, which will prevent further destabilization of the CalPERS risk pool, the Board requires the authority and flexibility to offer alternative benefit plans to its contracting agencies.

Technical, Theoretical and/or Empirical Studies, Reports or Documents: Not applicable.

Alternatives to the Regulatory Action and CalPERS’ Reasons for Rejecting Those Alternatives: CalPERS has considered alternatives to this proposal, and has determined that there is no more effective way to carry out its purpose that would be less burdensome.

Alternatives to the Regulatory Action that Would Lessen any Adverse Impact on Small Businesses: The proposed action has no cost impact on small businesses. The action only impacts the coordination of health benefits for retirees of the State and local public agencies and their family members.